Office of Chief Counsel Internal Revenue Service

memorandum

CC: POSTF-159763-01

date:

to:	LMSB	Financial	Products	&	Transactions	Team

Manager

Attn: Financial Products Specialist

from: Associate Area Counsel (LMSB/2),

subject:

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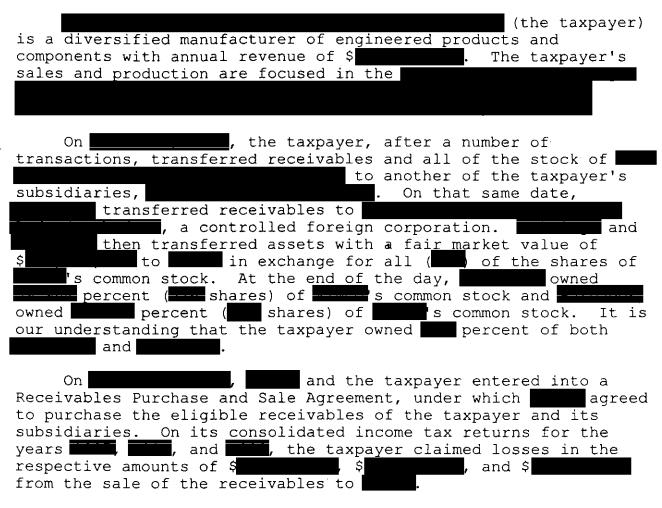
ISSUE

Whether the taxpayer is entitled to claim some \$ in losses from the sale of its receivables to a subsidiary.

CONCLUSION

The losses are barred by section 267 until such time as the receivables are transferred outside the controlled group and the loss would be recognized under consolidated return principles.

FACTS



The Financial Products Specialist proposes to disallow the losses that the taxpayer claimed from the sale of the receivables to under I.R.C. § 267.

DISCUSSION

In general there is nothing to prevent a taxpayer from selling or exchanging property for the sole purpose of establishing a tax loss, provided the sale is bona fide and the loss results from a closed transaction. I.R.C. § 267, however, adds a special exception to this general rule where a sale or exchange at a loss takes place between certain related parties. Specifically, section 267(a) provides that, except in the case of

a distribution in complete liquidation, "[n]o deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons," specified in section 267(b). Such persons include, <u>inter alia</u>: "two corporations which are members of the same controlled group (as defined in subsection (f)." I.R.C. § 267(b)(3).

As relevant here, for purposes of section 267 a "controlled group" is defined as one or more chains of corporations connected through stock ownership with a common parent if: (A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent is owned (within the meaning of subsection 1563(d)(1)) by one or more of the other corporations; and (B) the common parent corporation owns (within the meaning of subsection 1563(d)(1)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations. See I.R.C. § 267(f)(1).1

During the years , and , owned percent of shares) of scommon stock, and the taxpayer owned percent of both and . Thus, the losses claimed from the sale of the taxpayer's receivables to in , and are barred under section 267. Accordingly, the taxpayer is required to defer the losses until such time as the receivables are transferred outside the controlled group and the loss would be recognized under consolidated return principles.

See I.R.C. § 267(f)(2).

¹ For purposes of section 267, the term "controlled group" has the same meaning given to that term in I.R.C. \S 1563(a), with two modifications: (A) more than 50 percent is substituted for at least 80 percent each place it appears in section 1563(a), and (B) the determination is to be made without regard to subsections (a) (4) and (e) (3) (C) of section 1563. See I.R.C. \S 267(f) (1).

Please contact the undersigned at any questions or concerns regarding this memorandum.

Associate Area Counsel (Large and Mid-Size Business)

By:
Senior Attorney (LMSB)

cc: Financial Products Specialist

cc: LMSB Counsel,